

FILED

OCT 15, 1998

SUPREME COURT OF WISCONSIN

Marilyn L. Graves
Clerk of Supreme Court
Madison, WI

In the Matter of the Amendment of
Supreme Court Rules: SCR 21.07,
21.11, 22.27(5), 22.28(2) and (3),
and 22.30(1) -- Attorney Medical
Incapacity; License Reinstatement

ORDER
No. 98-02

On September 17, 1998, the court held a public hearing on its own motion for the amendment of the Supreme Court Rules of procedure in attorney discipline and medical incapacity proceedings to specify that a suspension of an attorney's license to practice law for medical incapacity under SCR 21.07 is for an indefinite period, to make procedural rules applicable to disciplinary proceedings applicable to medical incapacity proceedings, and to specify a procedure for license reinstatement following a suspension for medical incapacity. The court has considered the matters presented at that public hearing and submitted to the court in writing in response to the notice of public hearing.

IT IS ORDERED, effective the date of this order, that the Supreme Court Rules are amended as follows.

SECTION 1. 21.07 (1) and (2) of the supreme court rules are amended to read:

21.07 **Medical incapacity.** (1) A court finding an attorney mentally ill, drug dependent or an alcoholic, under chapter 51 of

the statutes, or an incompetent or spendthrift under chapter 880 of the statutes, shall immediately file a copy of the ~~finding~~ findings and order with the clerk of the supreme court and the board. The supreme court shall immediately ~~issue an order~~ suspending for medical incapacity order the attorney to show cause why the attorney's license to practice law should not be suspended by reason of medical incapacity. If cause satisfactory to the court is not shown, the court shall suspend the attorney's license to practice law for an indefinite period. SCR 21.09 does not apply to this subsection.

(2) An attorney's license to practice law ~~is subject to suspension~~ may be suspended indefinitely or his or her right to practice law may be made subject to conditions upon a finding that the attorney has a medical incapacity as defined in SCR 22.01 (12). SCR 21.09 applies to this subsection.

SECTION 2. 21.07 (3) of the supreme court rules is created to read:

(3) Reinstatement from a license suspension or the removal of conditions ordered under subs. (1) or (2) shall be pursuant to SCR 22.27 (5) by the filing of a petition for reinstatement under SCR 21.11, investigation by the board, and determination by the court that the attorney's medical incapacity has been removed.

SECTION 3. 21.11 of the supreme court rules is amended to read:

Reinstatement. A person whose license to practice law has been revoked, or suspended for a definite or an indefinite term, or with the imposition of conditions upon reinstatement, ~~or~~

~~suspended for medical incapacity~~ may file with the supreme court a petition for reinstatement. The board shall conduct an investigation of the moral character or medical capacity of the petitioner and shall report its findings and recommendations to the supreme court. The board of bar examiners shall make a recommendation to the supreme court on the legal competence of the petitioner to practice law. The supreme court may refer the petition to a referee for a hearing to be held in accordance with SCR 21.09 (4) and (5).

SECTION 4. 22.27 (5) of the supreme court rules is amended to read:

(5) An attorney whose license is suspended under SCR 21.07 or this rule may petition for reinstatement under SCR 21.11. The supreme court shall refer the application to the board, which shall ~~determine~~ investigate whether the attorney's medical incapacity has been removed. The board may direct an examination of the attorney by such qualified medical or psychological experts as the board designates and may direct that the expense of the examination be paid by the attorney. The applicant has the burden of showing by clear and convincing evidence that the incapacity has been removed and the applicant is fit to resume the practice of law. If an attorney who has been suspended under SCR 21.07 (1) is thereafter judicially declared to be ~~competent~~ no longer in the condition previously determined under chapter 51 or chapter 880 of the statutes, the supreme court may direct reinstatement with or without conditions. This subsection also governs a petition to remove conditions imposed under SCR 21.07.

SECTION 5. 22.28 (2) and (3) of the supreme court rules are amended to read:

(2) An attorney's license suspended for misconduct ~~or~~ ~~medical incapacity~~ for less than 6 months is automatically reinstated upon the attorney's filing with the administrator an affidavit showing full compliance with all the terms and conditions of the order of suspension.

(3) An attorney whose license is revoked ~~or~~, suspended for 6 months or more for misconduct, or suspended for medical incapacity shall not resume practice until the license is reinstated by order of the supreme court. A petition for reinstatement from a suspension for a definite term may be filed at any time commencing, ~~in the case of a license suspension,~~ 3 months prior to the expiration of the suspension period ~~or, in the case of a license revocation,~~. A petition for reinstatement from a license revocation may be filed at any time commencing 5 years after the effective date of revocation. A petition for reinstatement from a suspension for medical incapacity may be filed at any time. A petition for reinstatement shall be filed with the court and a copy shall be filed with the administrator.

SECTION 6. 22.30 (1) of the supreme court rules is amended to read:

(1) The supreme court, on its own motion or otherwise, may temporarily suspend an attorney's license to practice law in Wisconsin where it appears that the attorney's continued practice of law during the pendency of a disciplinary or medical

incapacity proceeding poses a threat to the interests of the public and the administration of justice.

IT IS FURTHER ORDERED that notice of these amendments of the Supreme Court Rules shall be given by a single publication of a copy of this order in the official state newspaper and in an official publication of the State Bar of Wisconsin.

Dated at Madison, Wisconsin, this 15th day of October, 1998.

BY THE COURT:

Marilyn L. Graves,
Clerk of Court